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Nimrod Megiddo

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EXAMINER

ELISCA, PIERRE E

ART UNIT

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* NIMROD MEGIDDO
9

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11 Appeal 2009-003744
12 Application 09/634,546
13 Technology Center 3600
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16 Decided: February 23, 2010
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20 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and JOSEPH A.
21 FISCHETTI, *Administrative Patent Judges*.

22
23 CRAWFORD, *Administrative Patent Judge*.
24

25
26 DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1, 3-16, 21, and 23-28. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented systems and methods for enhancing buyer's performance in electronic commerce (Spec. 2:3-5).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. A system for enhancing price discovery of products available in electronic commerce, wherein said system comprises:

one or more automated surveyors for surveying a plurality of: posted prices, bid prices, posted quotes, quoted prices, and auctions;

an anonymous buyer profile, said anonymous buyer profile used multiple times to develop historical usage thereof, said historical usage representing a sophisticated buyer and included within at least one of said one or more automated surveyors, said sophisticated buyer used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rosser	US 6,446,261 B1	Sep. 3, 2002
Togher	US 2005/0228748 A1	Oct. 13, 2005

The Examiner rejected claims 1, 3-16, 21, and 23-28 under 35 U.S.C. § 103(a) as being unpatentable over Togher in view of Rosser.

1 We REVERSE.

2

3 ISSUE

4 Did the Appellant show the Examiner erred in asserting that a
5 combination of Togher and Rosser renders obvious sophisticated buyers
6 developing historical usage via anonymous buyer profiles using fictitious
7 names, as recited in independent claims 1, 12, 21, and 27?

8

9 FINDINGS OF FACT

10 *Specification*

11 Appellant invented systems and methods for enhancing buyer's
12 performance in electronic commerce (Spec. 2:3-5).

13

14 *Togher*

15 Togher discloses an anonymous trading system which can identify the
16 best bids and offers from those counterparties with which each client site is
17 currently eligible to deal, while maintaining the anonymity of the potential
18 counterparty and the confidentiality of any specific credit limitations
19 imposed by the anonymous potential counterparty ([0006]).

20

21 *Rosser*

22 Rosser discloses a set-top downstream version of a Live Video
23 Insertion System that avoids the need for centralized data bases, with their
24 privacy and out-of-date concerns. The proposed targeting mechanism of
25 this, application, Anonymous Target Profiling, effectively targets viewers

1 profile factors without making them publicly available in a way that ensures
2 profile factors are close to 100% current (col. 3, ll. 4-13).

3 A broadcaster would establish a continuous survey of a few thousand
4 households of known profile factors for each significant broadcast region.
5 These surveys would be used to generate cross-correlations between viewer
6 usage profiles and viewer profile factors. Advertisers wishing to have their
7 advertising targeted to viewers with a particular sub-set of profile factors
8 would be able to use the cross-correlations to translate their viewer profile
9 requests into a viewer usage profiles request. The broadcaster would then
10 send the required viewer usage profiles as part of the broadcast in for
11 instance, the vertical blanking interval (VBI) along with the advertisers'
12 insertion also in the VBI, over a number of fields, if necessary. At the
13 viewer's set-top, the device would see which insertion was linked to the local
14 viewer usage profile, and insert appropriately (col. 4, ll. 15-30).

15 For instance, on a widely watched event, such as the super bowl, a car
16 company may chose to present different models, depending on the
17 demographic or psychographic profile of the family, based on their viewing
18 habits. As a simple example, a family with a viewing profile that includes
19 significant viewing of young children's programs is assumed to have
20 children and may be shown advertisements for a mini-van, while a family
21 with a profile that includes significant viewing of programs for out-door
22 sports may be shown an advertisement for a sports utility vehicle made by
23 the same company (col. 4, ll. 31-41).

PRINCIPLES OF LAW

Obviousness

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. To facilitate review, this analysis should be made explicit. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 401 (2007).

During examination, the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

We are persuaded of error on the part of the Examiner by Appellant's argument that a combination of Togher and Rosser does not render obvious sophisticated buyers developing historical usage via anonymous buyer profiles using fictitious names, as recited in independent claims 1, 12, 21, and 27 (App. Br. 14-22 Reply Br. 2-7). The Examiner appears to be asserting that Togher discloses an anonymous buyer profile and that Rosser discloses

1 an anonymous buyer profile developing historical usage, and that it would
2 have been obvious to combine the two to arrive at the claimed invention.
3 Specifically,

4 it would have been obvious to one of ordinary skill in the art at
5 the time the invention was made to modify Togher et al[.] to
6 include Rosser[']s system wherein the anonymous buyer profile
7 used multiple times to develop historical usage therefore, the
8 historical usage representing a sophisticated buyer because *this*
9 *would have provided an interactive and automated systems and*
10 *methods for conducting financial transactions and related*
11 *financial information in capital markets without knowledge of*
12 *who the customer (user) is.*

13 (Ex. Ans. 3-4; 6-7; 8; 11-12) (emphasis added). As an initial matter, we do
14 not understand how “provid[ing] interactive and automated systems and
15 methods for conducting financial transactions and related financial
16 information in capital markets” is a rationale underpinning as to why one of
17 ordinary skill would incorporate the historical usage of Rosser into the
18 anonymous buyer profile of Togher. *See In re Kahn*, 441 F.3d at 988. This
19 just describes what is disclosed in Togher.

20 The Examiner also appears to be asserting that it would have been
21 obvious to integrate Rosser into Togher to gain anonymity. However,
22 Togher already discloses anonymity, making it unnecessary to incorporate
23 the anonymity provisions of Rosser. Moreover, the Examiner has not
24 provided any rationale underpinning as to why one of ordinary skill would
25 incorporate historical usage into a buyer profile to gain anonymity. *See In re*
26 *Kahn*, 441 F.3d at 988.

27 Additionally, if the Examiner meant to provide other rationales for
28 combining Togher and Rosser, that analysis was not made explicit as
29 required to support a prima facie case of obviousness. *See KSR Int'l Co. v.*

1 *Teleflex, Inc.*, 550 U.S. at 401. Accordingly, because the Examiner has not
2 set forth a proper rationale for combining Togher and Rosser, we do not
3 sustain this rejection. *See In re Oetiker*, 977 F.2d at 1445.

4
5 **CONCLUSION OF LAW**

6 On the record before us, Appellant has shown that the Examiner erred
7 in rejecting claims 1, 3-16, 21, and 23-28.

8
9 **DECISION**

10 The decision of the Examiner to reject claims 1, 3-16, 21, and 23-28 is
11 reversed.

12
13 **REVERSED**

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